

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32

(Castro Valley, California)

EDEN MEDICAL CENTER, INC.

Employer

and

NATIONAL UNION OF HEALTHCARE WORKERS,

Case 32-RC-5656

Petitioner

and

SERVICE EMPLOYEES INTERNATIONAL UNION,  
UNITED HEALTHCARE WORKERS-WEST

Intervenor/Incumbent Union

**REGIONAL DIRECTOR'S DECISION AND**  
**DIRECTION OF ELECTION**

The Employer, Eden Medical Center, Inc., operates an acute care hospital located in Castro Valley, California.<sup>1</sup> The Petitioner, National Union of Healthcare Workers, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act to represent two distinct bargaining units covered by the expired collective-bargaining agreement between the Employer and the Intervenor, Service Employees International Union, United Healthcare Workers-West, which was in effect from March 8, 2004 to June 30, 2008. The Petitioner seeks to represent a unit of clerical employees employed by the Employer, as well as a separate unit of service and technical employees.

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<sup>1</sup> The Employer also operates an acute care hospital in San Leandro, California. The San Leandro facility is not involved in this proceeding. The bargaining unit at issue herein is limited to employees at the Employer's facility located at 20103 Lake Chabot Road in Castro Valley, California.

Subsequent to the filing of the petition, the Employer and the Intervenor executed a new collective-bargaining agreement effective December 20, 2009 to December 19, 2012, which, like the expired agreement, covers a Clerical Unit, as well as a distinct Service and Technical Unit. The Employer currently employs about 150 employees in the Clerical Unit covered by its current collective-bargaining agreement with the Intervenor and about 180 employees in the Service and Technical Unit covered by the same agreement. The Employer and the Intervenor maintain that the appropriate Clerical Unit and the appropriate Service and Technical Unit consist of the job classifications listed for each unit in their current collective-bargaining agreement.

For the Clerical Unit, the Petitioner contends that two positions which were listed in the expired collective-bargaining agreement but are not listed in the current agreement, Clerk Hand and Darkroom Technician, should be included in the bargaining unit. For the Service and Technical Unit, the Petitioner contends that the Head Housekeeper and Washer/Linen positions, which were also listed in the expired collective-bargaining agreement but not in the current agreement, should be included in the unit.<sup>2</sup>

A hearing officer of the Board held a hearing on April 20, 2010.<sup>3</sup> The Petitioner, the Employer and the Intervenor appeared at the hearing and participated. The Petitioner filed a post-hearing brief with me. I have considered the record evidence and the arguments presented by the parties at the hearing and by the Petitioner in its brief. As discussed below, I find that the Clerical Unit described in the current collective-bargaining agreement between the Employer and the Intervenor, effective December 20, 2009 to December 19, 2012, is an appropriate unit. I further find that the Service and Technical Unit described in the current collective-bargaining

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<sup>2</sup> At the hearing, the parties stipulated that two additional positions which are not listed in the current collective-bargaining agreement or in the instant petition, Senior LVN and Licensed Psychiatric Technician, should be included in the Service and Technical Unit.

<sup>3</sup> All dates hereinafter refer to 2010 unless otherwise stated.

agreement between the Employer and the Intervenor is an appropriate unit, with the inclusion of the Senior LVN and Licensed Psychiatric Technician positions, which are not listed in the current agreement, but which the parties have stipulated to include.

### **THE FACTS**

On April 3, 2009, the Petitioner filed a petition to represent a unit of clerical employees described in the expired collective-bargaining agreement between the Employer and the Intervenor, including:

Clerical Unit: Van Driver, Medical Records Clerk I, Clerk Hand, Medical Records Assistant, Medical Records Clerk II, Administrative Assistant I, Admin. Clerk, Darkroom Tech., Unit Secretary I, Medical Records Clerk, Courier/Storekeeper, Transcription/Coding Auditor, PBX/Mail Clerk, Acuity Auditor, Administrative Assistant II, Department Secretary/Recept., Histology Assistant, Medical Records Assistant II, Medical Records Clerk III, Admin. Assistant-Phys. Med. I, Admitting Representative, Outpatient Registration Rep., Outpatient Registration Rep./E.D., Outpatient Registration Rep./Lobby, Administrative Assistant III, Staffing Asst., Department Secretary I, Trauma Services Assistant, Unit Secretary II, Medical Records Float Clerk, Senior Storekeeper, Secretary/Receptionist, Medical Staff Assistant, Utilization Secretary, Senior Department Secretary, Surgery Scheduler Coord., Financial Counselor, Histology Assistant I, Insurance Verifier, Surgery Scheduler, Transcriber II, and Transcriptionist.

In the petition, the Petitioner also sought to represent a separate unit of service and technical employees described in the expired agreement, including:

Service and Technical Unit: All Other Cooks, C.S. Tech. II (Certified), C.S. Tech. I, C.S. Tech. II Lead, Diet Aide I, Diet Aide II (Certified), Dishwasher/Potwasher, E.R. Dept. Tech., Head Housekeeper, Housekeeper I, Housekeeper II, Kitchen Helper, Kitchen Porter, Linen Distributor, LVN, NA/INS Tech., Nursing Assistant, Nutrition Aide, O.B. Tech., O.R. Tech., Ortho. Tech., P.T. Aide, P.T. Aide II, Second Cook, and Washer/Linen.

Between the date the petition was filed and the date of the hearing, the Employer and the Intervenor executed a new collective-bargaining agreement. The new agreement incorporates some changes to the job classifications included in each bargaining unit. Due to these changes,

the job classifications described for each unit in the current agreement are not exactly the same as the job classifications described for each unit in the expired agreement. Some job titles were added to each unit, while others were removed.

### **Clerical Unit**

At the hearing, all parties stipulated that the appropriate Clerical Unit consists of the job classifications listed for the Clerical Unit in the current collective-bargaining agreement between the Employer and the Intervenor, with the exception of four job classifications that the Petitioner disputed: Clerk Hand, Darkroom Technician, Radiology Scheduling Coordinator, and Transcription/Quality Coordinator. The Clerk Hand and Darkroom Technician classifications were removed from the Clerical Unit in the current contract, and the Petitioner contended at the hearing that it did not have enough information about the reason why these positions were removed to stipulate that they should be excluded from the unit. The Radiology Scheduling Coordinator and Transcription/Quality Coordinator classifications were added to the Clerical Unit in the current contract, and the Petitioner similarly contended that it did not have enough information about the reason why these positions were added to stipulate that they should be included in the unit. Subsequent to the hearing, the Petitioner stipulated in its post-hearing brief to include the Radiology Scheduling Coordinator and Transcription/Quality Coordinator classifications in an appropriate Clerical Unit. Thus, the only remaining issue regarding the Clerical Unit is whether the Clerk Hand and Darkroom Technician positions, which are listed in the petition and the expired collective-bargaining agreement, but are not listed in the current agreement, should be included in the bargaining unit, as the Petitioner contends.

The Clerk Hand classification referred to a clerk position in the Employer's former Hand Clinic. The Employer's Director of Human Resources, Peter Eggleton, testified at the hearing

that the Employer closed its Hand Clinic and the Clerk Hand position was eliminated when the clinic closed. Eggleton's un rebutted testimony is that no one occupies this position, and the position itself no longer exists. The Petitioner presented no evidence to the contrary.

Eggleton similarly testified that the Darkroom Technician position no longer exists. He testified that no one has been employed as a Darkroom Technician since at least July 2006, when he began working for the Employer, and he has no knowledge of when, or if, anyone was ever employed in the position. Moreover, the Employer does not have a darkroom, and Eggleton had no knowledge of when, or if, the Employer ever had a darkroom. The Petitioner presented no evidence that the Employer has ever employed anyone in the Darkroom Technician position.

#### **Service and Technical Unit**

At the hearing the parties reached a stipulated agreement that the appropriate Service and Technical Unit consists of the job classifications listed for the Service and Technical Unit in the current collective-bargaining agreement between the Employer and the Intervenor, again with the exception of four job classifications that the Petitioner disputed: Head Housekeeper, Washer/Linen, MHA/NA, and Surgical Technologist. The parties also agreed at the hearing to include two additional classifications in the Service and Technical Unit that are not listed in the current agreement: Senior LVN and Licensed Psychiatric Technician. Subsequent to the hearing, the Petitioner stipulated in its post-hearing brief to include the MHA/NA and Surgical Technologist classifications in an appropriate Service and Technical Unit. Thus, the only remaining issue regarding the Service and Technical Unit is whether the Head Housekeeper and Washer/Linen positions, which were listed in the petition and the expired collective-bargaining agreement, but are not listed in the current agreement, should be included in the bargaining unit, as the Petitioner contends.

Eggleton testified at the hearing that the Head Housekeeper classification was removed from the unit description in the current collective-bargaining agreement because no one has ever been employed in that position. The Petitioner presented no evidence that anyone is currently employed, or was ever employed, in the Head Housekeeper position. Regarding the Washer/Linen position, the evidence shows that the job title was simply abbreviated to “Washer” in the current collective-bargaining agreement. The un rebutted evidence is that the job description and job duties are the same for the “Washer” position listed in the current contract as they were for the “Washer/Linen” position listed in the expired contract. Thus, any change to the Washer/Linen position was in name only. The Petitioner presented no evidence that the change from “Washer/Linen” to “Washer” resulted in any changes to the number of bargaining-unit employees or their job duties.

### **ANALYSIS**

The evidence shows that the Clerical Unit and the separate Service and Technical Unit sought by the Petitioner are not substantially different from Clerical Unit and the Service and Technical Unit described in the current collective-bargaining agreement. Essentially, all parties agree that the appropriate bargaining units are the units described in the current collective-bargaining agreement between the Employer and the Intervenor. However, the Petitioner contends that the Clerk Hand and Darkroom Technician positions named in the petition should be included in the Clerical Unit, and the Head Housekeeper and Washer/Linen positions named in the petition should be included in the Service and Technical Unit simply because these job titles were listed in the expired collective-bargaining agreement.

Although the Clerk Hand and Darkroom Technician positions were listed in the expired contract, the Petitioner presented no evidence that anyone was actually employed in either of

those positions at the time it filed the petition. On the contrary, the evidence shows that no one has been employed as a Clerk Hand or a Darkroom Technician since at least July 2006. Moreover, the job titles themselves no longer exist because the Employer no longer has a Hand Clinic or a darkroom. It is clear that the removal of the Clerk Hand and Darkroom Technician job classifications from the current contract did not remove any employees from the Clerical Unit or change the size or character of the unit in any other way. Accordingly, I find no merit to the Petitioner's argument that these positions must be included in an appropriate Clerical Unit.

Similarly, the Petitioner presented no evidence that anyone was employed in the position of Head Housekeeper at the time it filed the petition, or at any other time. The Employer's un rebutted evidence is that it never employed anyone in this position, and the elimination of the Head Housekeeper job title did not exclude any employees from the Service and Technical Unit. Accordingly, I find no merit to the Petitioner's contention that the unoccupied job title of Head Housekeeper must nonetheless be included in an appropriate Service and Technical Unit.

Regarding the Washer/Linen position, the evidence shows that the position was not removed from the bargaining unit, as the Petitioner contends. Rather, the job title was simply abbreviated to "Washer." The Employer presented evidence that the job description and job duties for the "Washer" position are the same as for the "Washer/Linen" position listed in the expired contract. The change was a change in name only. Under these circumstances, I find no merit to the Petitioner's contention that the appropriate unit must list the job title as "Washer/Linen," rather than "Washer," merely because "Washer/Linen" was the title used in the expired agreement.

Based on the above, it is evident that the minor changes to the job titles in the current collective-bargaining agreement did not change the composition, size or character of the

petitioned-for bargaining units. There is no substantive difference between the bargaining units described in the current contract and the bargaining units described in the petition. Accordingly, I find that the Clerical Unit described in the current collective-bargaining agreement between the Employer and the Intervenor, effective December 20, 2009 to December 19, 2012, is an appropriate unit. I further find that the Service and Technical Unit described in the current collective-bargaining agreement between the Employer and the Intervenor, effective December 20, 2009 to December 19, 2012, is an appropriate unit, with the inclusion of the Senior LVN and Licensed Psychiatric Technician positions, which the parties stipulated to include.

### **CONCLUSIONS**

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.
4. The parties stipulated, and I find, that the Intervenor is a labor organization within the meaning of the Act.
5. The Petitioner claims to represent certain employees of the Employer.
6. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.



7. The following employees of the Employer constitute an appropriate Clerical Unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

Clerical Unit: Van Driver, Mail Clerk Trainee, Medical Records Clerk I, Medical Records Assistant, Medical Records Clerk II, Admin. Assistant I, Admin. Clerk, Unit Secretary I, Medical Records Clerk, Acuity Auditor, Admin. Assistant II, Courier/Storekeeper, Department Secretary/Recept., Histology Assistant, Medical Records Assistant II, PBX/Mail Clerk, PBX/Mail Tech. Specialist, Transcription/Coding Auditor, Medical Records Clerk III, Admin. Assistant-Phys. Med. I, Admin. Assistant III, Admitting Representative, Dept. Secretary I, Outpatient Registration Rep./ED, Outpatient Registration Rep., Outpatient Registration Rep./Lobby, Staffing Assistant, Trauma Services Asst., Unit Secretary II, Medical Records Float Clerk, Admin. Asst.-Phys. Med. II, Financial Counselor, Histology Assistant I, Insurance Verifier, Medical Staff Assistant, Radiology Scheduling Coord., Secretary/Receptionist, Senior Department Secretary, Senior Storekeeper, Surgery Scheduler, Surgery Scheduling Coord., Utilization Secretary, PBX Mail/Tech. Specialist, Transcriber II, Transcriptionist and Transcriptionist/Quality Coord. **Excluding:** all executive and professional employees; employees presently in other bargaining units recognized by Eden Medical Center, Inc.; guards; and supervisors as defined in the National Labor Relations Act.

There are approximately 150 employees in the Clerical Unit.

8. The following employees of the Employer constitute an appropriate Service and Technical Unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Service and Technical Unit: Housekeeper I, Kitchen Helper, Linen Distributor, Nutrition Aide, Dishwasher/Potwasher, Housekeeper II, Kitchen Porter, Diet Aide I, Washer, Central Supply Tech. I, Physical Therapy Aide I, Nurse Assistant, MHA/NA (same as NA), Diet Aide II, Ortho. Tech., Cook-All Other, Central Supply Tech. II, Lead Central Supply Tech. II, Second Cook, NA/INS Tech., Physical Therapy Aide II, Emergency Dept. Tech., LVN, Surgical Technologist, OB Tech, Senior LVN, and Licensed Psychiatric Technician. **Excluding:** all executive and professional employees; employees presently in other bargaining units recognized by Eden Medical Center, Inc.; guards; and supervisors as defined in the National Labor Relations Act.

There are approximately 180 employees in the Service and Technical Unit.

## **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the two separate units found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **National Union of Healthcare Workers**, or **Service Employees International Union, United Healthcare Workers-West**, or **neither**. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

### **A. Voting Eligibility**

Eligible to vote in the election are those in the two separate units who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States Government may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees engaged in a strike who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

**B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within **seven** days of the date of this Decision, the Employer must submit to the Regional Office election eligibility lists for each of the separate bargaining units containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). These lists must be of sufficiently large type to be clearly legible. To speed both the preliminary checking and the voting process, the names on the lists should be alphabetized (overall or by department, etc.). Upon receipt of the lists, I will make it available to all parties to the election.

To be timely filed, the lists must be received in the Regional Office, 1301 Clay Street, Suite 300N, Oakland, California 94612 on or before **May 24, 2010**. No extension of time to file these lists will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file these lists. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The lists may be submitted to the Regional Office by electronic filing through the Agency's website, **[www.nlr.gov](http://www.nlr.gov)**,<sup>4</sup> by mail, by hand or courier delivery, or by facsimile transmission at **(510) 637-3315**. Since the lists will be made available to all parties to the election, please furnish a total of **three** copies of each list, unless the lists are submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

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<sup>4</sup> To file the eligibility lists electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

**C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of **three** working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least **five** full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

**RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14<sup>th</sup> Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **June 1, 2010**. The request may be filed electronically through E-Gov on the Agency's website, [www.nlr.gov](http://www.nlr.gov),<sup>5</sup> but may **not** be filed by facsimile.

Dated at Oakland, California this 17<sup>th</sup> day of May, 2010.

/s/ Alan B. Reichard  
Alan B. Reichard  
Regional Director  
National Labor Relations Board, Region 32  
1301 Clay Street, Suite 300N  
Oakland, California 94612-5224

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<sup>5</sup> To file the request for review electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu and follow the detailed instructions. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, [www.nlr.gov](http://www.nlr.gov).